

Message Text

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INFO OCT-01 EA-12 ISO-00 EB-08 CCO-00 PASO-00 /021 W

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P 300839Z JUN 78

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC PRIORITY 9223

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E.O. 11652: N/A

TAGS: EIND, JA, US

SUBJECT: TRADEMARK/TRADENAME DISPUTE: HART SKI

MANUFACTURING COMPANY, ST. PAUL, MINNESOTA

TO: MR. CHARLES UNTERNAHRER

- VICE PRESIDENT
- HART SKI COMPANY
- 630 PIERCE BUTLER ROUTE
- P.O. BOX 43049
- ST. PAUL, MINNESOTA 55164
- TEL: (612)489-8071
- TWX: 910-563-3718

REFERENCE: HART COMPANY LETTER (WITH ENCLOSURE) TO
AMBASSADOR MANSFIELD DATED MAY 17, 1978.

1. EMBASSY OFFICERS MET WITH MINISTRY OF INTERNATIONAL
TRADE AND INDUSTRY (MITI) OFFICIALS ON MAY 31 AND ASKED
THEM TO DISCUSS YOUR TRADEMARK/TRADENAME PROBLEM WITH
JAPANESE PATENT OFFICE. ON JUNE 30, MITI REPORTED ITS
FINDINGS AND SUGGESTIONS TO EMBASSY, IN PRESENCE OF
JAPANESE PATENT OFFICE OFFICIAL.

2. PATENT OFFICE HAD BEEN ON THE POINT OF DECIDING IN
FAVOR OF ITO AND COMPANY UNTIL YOUR REFERENCED LETTER
REACHED THEM. THEY HAVE BEEN TAKING A SECOND LOOK AT
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THIS MATTER SINCE THAT TIME, AND NOW EXPECT TO REACH A
FINAL DECISION WITHIN TWO WEEKS TO ONE MONTH. HOWEVER,
DOCUMENTATION OF YOUR SALES EFFORTS IN JAPAN PRIOR TO
1967, WHEN MR. ITO APPLIED FOR PATENT REGISTRATION, IS
MOST IMPORTANT TO BUTRESS YOUR CASE. POINT AT ISSUE
IS WHETHER NAME OF HART WAS "WELL-KNOWN" IN JAPAN AT
THIS TIME (1967). PATENT OFFICE HAS EXAMINED DOCUMENTS

RELATING TO PERIOD AFTER 1967, BUT HAS NOTHING ON PERIOD BEFORE THAT DATE.

3. REQUEST YOU FORWARD IMMEDIATELY ANY DOCUMENTS WHICH WOULD SUPPORT ARGUMENT THAT TRADENAME HART WAS "WELL-KNOWN" IN JAPAN PRIOR TO 1967. EXAMPLES OF RELEVANT DOCUMENTS INCLUDE INVOICES OR OTHER RECORDS SHOWING AMOUNT OF HART PRODUCTS EXPORTED TO JAPAN, CONTRACTS OR OTHER BUSINESS DOCUMENTS WHICH WOULD SHOW LENGTH OF TIME HART HAD BEEN SELLING IN JAPAN PRIOR TO 1967, NEWSPAPER ADVERTISEMENTS OR OTHER ADVERTISING USED IN JAPAN.

4. ANY SUCH DOCUMENTS SHOULD BE FORWARDED TO COMMERCIAL ATTACHE, U.S. EMBASSY, APO SAN FRANCISCO 96503. EMBASSY WILL PASS DOCUMENTS TO JAPANESE PATENT OFFICE THROUGH MITI. PATENT OFFICE HAS PROMISED TO REVIEW SUCH EVIDENCE CLOSELY, AND HAS STATED ITS WILLINGNESS TO RULE IN HART'S FAVOR IF ADEQUATE DOCUMENTATION IS RECEIVED TO SUPPORT ARGUMENT THAT TRADENAME WAS "WELL-KNOWN" IN JAPAN PRIOR TO 1967.

5. MITI AND PATENT OFFICE OFFICIALS EXPLAINED THAT, IF INITIAL PATENT OFFICE RULING IS IN FAVOR OF ITO AND COMPANY AND AGAINST HART, HART MAY APPEAL ITO'S REGISTRATION OF HART TRADENAME ON GROUNDS THAT, AT TIME UNCLASSIFIED

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OF APPLICATION FOR REGISTRATION, ITO AND COMPANY WAS ACTING AS IMPORT AGENT OF HART. TO BEST OF OUR UNDERSTANDING, LEGAL GROUNDS WOULD BE THAT PROPRIETARY RIGHTS OF HART (PARENT COMPANY) WOULD TAKE PRECEDENCE OVER PROPRIETARY RIGHTS OF JAPANESE IMPORTER. THIS LATTER POINT IS UNOFFICIAL EMBASSY INTERPRETATION ONLY AND ANY APPEALS SHOULD BE MADE ONLY AFTER CONSULTATION WITH COMPETENT LEGAL COUNSEL.

6. PLEASE ADVISE US WHETHER ADDITIONAL DOCUMENTATION WILL BE FORWARDED AND WHEN IT CAN BE EXPECTED TO ARRIVE. IF DOCUMENTS ARE BEING SENT TO EMBASSY, WE WILL INFORM MITI AND PATENT OFFICE AND ASK THAT DECISION ON TRADENAME APPLICATION BE POSTPONED UNTIL DOCUMENTS ARRIVE.

AMERICAN EMBASSY
TOKYO, JAPAN
MANSFIELD

NOTE BY OC/T: PASSED ABOVE ADDRESSEE.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DISPUTES, TRADEMARKS
Control Number: n/a
Copy: SINGLE
Draft Date: 30 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978TOKYO11940
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780270-0483
Format: TEL
From: TOKYO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978061/aaaaaapb.tel
Line Count: 114
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: f5fa067c-c288-dd11-92da-001cc4696bcc
Office: ACTION COME
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2129227
Secure: OPEN
Status: NATIVE
Subject: TRADEMARK/TRADENAME DISPUTE: HART SKI MANUFACTURING COMPANY, ST. PAUL, MINNESOTA TO: MR. CHARLES UNTERNAHRER
TAGS: EIND, JA, US, HART SKI MANUFACTURING CO
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/f5fa067c-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014